IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.482 OF 2006

IN

SUMMARY SUIT NO.2540 OF 2006

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Mrs.Vasanti Anil Kotian ...Plaintiff

v/s.

Mr.Shehandi Iqbal Ali Abdul Rajak ...Defendant

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Mr.A.C. Singh i/b V.T. Dubey for the Plaintiff.

Mr.Kayam Shaikh i/b Mishra & Co. for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD JANUARY,2007

P.C.:

1. The Plaintiff has filed this suit for recovery of the amount for which according to the Plaintiff, the Defendant had given a cheque which was dishonoured because of insufficient fund. The case of the Plaintiff is that the Plaintiff had advanced loan to the Defendant. The Defendant had mortgaged his shop for securing loan. That was in the year 2003. The loan was to be paid in 2005. The loan was not paid by the Defendant. Therefore, he renewed the mortgage. Thereafter, the Defendant issued a cheque for repayment of the loan. That cheque got dishonoured. The Plaintiff has given up his security namely the mortgage and has filed the suit for recovery of the amount of the dishonoured cheque.

2. According to the Defendant, there was a loan transaction between him and the father-in-law of the Plaintiff of the year 2002. That transaction, according to defendant closed when the Defendant handed over shop to the father-in-law of the Plaintiff. According to the Defendant, he is in

possession of the original mortgage deed and the mortgage deed on which the Plaintiff relies is a forgery. So far as the cheque is concerned, the case of the Defendant is that when the shop which was given to the father-in-law of the Plaintiff, some blank cheques of the Defendant were lying with him and one of those cheques has been misused by the Plaintiff by forging the signature of the Defendant on the cheque.

3. The defence put up by the Defendant is incapable of being accepted. Had the cheque been of the year 2003 and had it been used in the year 2006, the Defendant could have easily produced the cheque book that must have been issued by the bank after the year 2003 to show that the cheque which was tendered by the Plaintiff belongs to the cheque book which was given to him in the year 2003. Now, these were the facts within the special knowledge of the Defendant, which the Defendant could have easily produced. Failure of the Defendant to produce these documents which were within his custody, makes him liable for drawl of adverse inference against him. The case of the Defendant that his signature was forged by the Plaintiff on the cheque book is also hard to be

believed. The bank has refused to pay the amount on the ground that funds were insufficient and not on the ground that the signature did not tally.

4. Taking overall view of the matter, therefore, it appears that the defence that has been put up by the Defendant is totally false and therefore the Defendant has no defence to offer. The Plaintiff is, therefore, entitled to decree. Summons for judgment is, therefore, granted. Suit of the plaintiff is decreed in terms of prayer clause (a) and (b). Refund of court fees as per rules.

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